

§6326. Order of abandonment for residential properties in foreclosure

1. Plaintiff request. The plaintiff in a judicial foreclosure action may present evidence of abandonment as described in subsection 2 and may request a determination pursuant to subsection 3 that the mortgaged premises have been abandoned if:

A. More than 50% of the mortgaged premises is used for residential purposes; and [PL 2013, c. 521, Pt. B, §1 (NEW); PL 2013, c. 521, Pt. B, §2 (AFF).]

B. The mortgaged premises are the subject of an uncontested foreclosure action or an uncontested foreclosure judgment has been issued with respect to the premises and a foreclosure sale with respect to the premises is pending pursuant to this subchapter. An action or judgment is uncontested if:

(1) The mortgagor has not appeared in the action to defend against foreclosure;

(2) There has been no communication from or on behalf of the mortgagor to the plaintiff for at least 90 days showing any intent of the mortgagor to continue to occupy the premises or there is a document of conveyance or other written statement, signed by the mortgagor, that indicates a clear intent to abandon the premises; and

(3) Either all mortgagees with interests that are junior to the interests of the plaintiff have waived any right of redemption pursuant to section 6322 or the plaintiff has obtained or has moved to obtain a default judgment against such junior mortgagees. [PL 2013, c. 521, Pt. B, §1 (NEW); PL 2013, c. 521, Pt. B, §2 (AFF).]

[PL 2013, c. 521, Pt. B, §1 (NEW); PL 2013, c. 521, Pt. B, §2 (AFF).]

2. Evidence of abandonment. For the purposes of this section, evidence of abandonment showing that the mortgaged premises are vacant and the occupant has no intent to return may include, but is not limited to, the following:

A. Doors and windows on the mortgaged premises are continuously boarded up, broken or left unlocked; [PL 2013, c. 521, Pt. B, §1 (NEW); PL 2013, c. 521, Pt. B, §2 (AFF).]

B. Rubbish, trash or debris has observably accumulated on the mortgaged premises; [PL 2013, c. 521, Pt. B, §1 (NEW); PL 2013, c. 521, Pt. B, §2 (AFF).]

C. Furnishings and personal property are absent from the mortgaged premises; [PL 2013, c. 521, Pt. B, §1 (NEW); PL 2013, c. 521, Pt. B, §2 (AFF).]

D. The mortgaged premises are deteriorating so as to constitute a threat to public health or safety; [PL 2013, c. 521, Pt. B, §1 (NEW); PL 2013, c. 521, Pt. B, §2 (AFF).]

E. A mortgagee has changed the locks on the mortgaged premises and neither the mortgagor nor anyone on the mortgagor's behalf has requested entrance to, or taken other steps to gain entrance to, the mortgaged premises; [PL 2013, c. 521, Pt. B, §1 (NEW); PL 2013, c. 521, Pt. B, §2 (AFF).]

F. Reports of trespassers, vandalism or other illegal acts being committed on the mortgaged premises have been made to local law enforcement authorities; [PL 2013, c. 521, Pt. B, §1 (NEW); PL 2013, c. 521, Pt. B, §2 (AFF).]

G. A code enforcement officer or other public official has made a determination or finding that the mortgaged premises are abandoned or unfit for occupancy; [PL 2013, c. 521, Pt. B, §1 (NEW); PL 2013, c. 521, Pt. B, §2 (AFF).]

H. The mortgagor is deceased and there is no evidence that an heir or personal representative has taken possession of the mortgaged premises; and [PL 2013, c. 521, Pt. B, §1 (NEW); PL 2013, c. 521, Pt. B, §2 (AFF).]

I. Other reasonable indicia of abandonment. [PL 2013, c. 521, Pt. B, §1 (NEW); PL 2013, c. 521, Pt. B, §2 (AFF).]

[PL 2013, c. 521, Pt. B, §1 (NEW); PL 2013, c. 521, Pt. B, §2 (AFF).]

3. Court determination of abandonment; vacation of order. The plaintiff may at any time after commencement of a foreclosure action under section 6321 file with the court a motion to determine that the mortgaged premises have been abandoned.

A. If the court finds by clear and convincing evidence, based on testimony or reliable hearsay, including affidavits by public officials and other neutral nonparties, that the mortgaged premises have been abandoned, the court may issue an order granting the motion and determining that the premises are abandoned. [PL 2013, c. 521, Pt. B, §1 (NEW); PL 2013, c. 521, Pt. B, §2 (AFF).]

B. The court may not grant the motion if the mortgagor or a lawful occupant of the mortgaged premises appears and objects to the motion. [PL 2013, c. 521, Pt. B, §1 (NEW); PL 2013, c. 521, Pt. B, §2 (AFF).]

C. The court shall vacate the order under paragraph A if the mortgagor or a lawful occupant of the mortgaged premises appears in the action and objects to the order prior to the entry of judgment. [PL 2013, c. 521, Pt. B, §1 (NEW); PL 2013, c. 521, Pt. B, §2 (AFF).]

[PL 2013, c. 521, Pt. B, §1 (NEW); PL 2013, c. 521, Pt. B, §2 (AFF).]

4. Effect of court determination of abandonment. Upon the issuance of an order of abandonment under subsection 3 determining that the mortgaged premises are abandoned:

A. The foreclosure action may be advanced on the docket and receive priority over other cases as the interests of justice require; [PL 2013, c. 521, Pt. B, §1 (NEW); PL 2013, c. 521, Pt. B, §2 (AFF).]

B. The period of redemption provided for in section 6322 is shortened to 45 days from the later of the issuance of the judgment of foreclosure and the order of abandonment; [PL 2013, c. 521, Pt. B, §1 (NEW); PL 2013, c. 521, Pt. B, §2 (AFF).]

C. If the mortgaged premises include dwelling units occupied by tenants as their primary residence, the plaintiff shall assume the duties of landlord for the rental units as required by chapter 709 upon the later of the issuance of the judgment of foreclosure and the order of abandonment; and [PL 2013, c. 521, Pt. B, §1 (NEW); PL 2013, c. 521, Pt. B, §2 (AFF).]

D. The plaintiff shall notify the municipality in which the premises are located and shall record the order of abandonment in the appropriate registry of deeds within 30 days from the later of the issuance of the judgment of foreclosure and the order of abandonment. [PL 2013, c. 521, Pt. B, §1 (NEW); PL 2013, c. 521, Pt. B, §2 (AFF).]

[PL 2013, c. 521, Pt. B, §1 (NEW); PL 2013, c. 521, Pt. B, §2 (AFF).]

SECTION HISTORY

PL 2013, c. 521, Pt. B, §1 (NEW). PL 2013, c. 521, Pt. B, §2 (AFF).

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